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2 enter into the settlement agreement was not
3 based in any way on any conclusions, either
4 preliminary or final, that NewOak had reached
5 with respect to the analysis set forth in
6 Dr. D'Vari's report?

7 A. That's correct.

8 Q. Okay.

9 Then if you turn to paragraph 34.

10 A. Yes.

11 Q. The arm's length negotiations, and
12 just so I'm clear. It's the debtor's position
13 that the mediation confidentiality order in
14 place prohibits the disclosure of any substance
15 between FGIC or its counsel, on the one side,
16 and the debtors and their counsel, on the other
17 side, with respect to the FGIC claims?

18 MR. KERR: Let me put it this way. I
19 think Mr. Kruger has described the
20 mediation, the involvement of people or
21 whatever; but I think the communications,
22 the substance, the back and forth, is
23 subject to the confidentiality order
24 entered by Judge Glenn, relied upon by
25 Judge Peck and all the parties.

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2 And so, in terms of the substance of
3 the communications back and forth, that's
4 confidential.

5 BY MR. SHORE:

6 Q. So what can you, beyond what you've
7 testified to today, tell me about the arm's
8 length nature of the negotiations with FGIC?

9 MR. KERR: Again, just without
10 disclosing any of the substance of the
11 conversations.

12 A. I can say that they were obviously
13 experienced trustees, experienced counsel,
14 experienced advisors, FGIC itself were
15 well-represented, and all of that a process
16 overseen by Judge Peck, looked to me like a
17 very vigorous, robust process that went on for
18 months.

19 Q. And let me talk about it from the
20 debtor's side.

21 What can you testify to today, other
22 than what you already have, to give any
23 creditor, creditors within the case, leave
24 aside the non-creditors in the case, comfort
25 that the debtors didn't just roll over and give

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2 a 330 million, \$337 million claim to FGIC in
3 exchange for a signature on a plan support
4 agreement?

5 MR. KERR: Objection.

6 A. Let me answer it this way.

7 We were part of the mediation process
8 all through it. I've only been part of the
9 mediation process since the middle of February.
10 And the mediation process, as I saw it myself,
11 was one that was both vigorously contested by
12 the parties. We had reviewed with people,
13 parties, the pros and cons of their positions.
14 We did that for Judge Peck, as well.

15 So I was informed with respect to all
16 of those kinds of issues, that presentations
17 made to me by parties, all of that led me to
18 believe that the global settlement agreement
19 was a sensible thing to pursue and that this
20 settlement agreement was an important part of
21 that.

22 Q. And that's the extent of your defense
23 of a concern that creditors at ResCap, LLC
24 might have that a 330 million, \$337 million
25 claim was given in exchange for a plan support

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2 agreement to foster the global settlement
3 which, of course, is important?

4 MR. KERR: Objection.

5 A. Because I believe that if there was
6 no global settlement agreement and there would
7 be no \$337 million claim available at ResCap,
8 there would be no \$2.1 billion coming into the
9 estate, there would be very little recovery for
10 a creditors out of this estate, and ResCap,
11 GMAC or RFC.

12 Q. Well, let's peel that apart.

13 First of all, if the global
14 settlement didn't occur, the -- no one would
15 release claims against Ally; right?

16 A. Right.

17 Q. And we would have every cause of
18 action that was identified against Ally in the
19 examiner's report would still be a valid claim
20 that the debtors would bring that's not time
21 barred; right?

22 A. Examiner's report?

23 Q. In the examiner's report. The
24 examiner's report lays out all sorts of claims
25 that the debtors could bring and might even win

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2 against Ally; right?

3 A. I'm not going to comment on the
4 examiner's report. It's all hearsay whether
5 the advised causes of action that are sensible
6 to pursue or not is subject to a different
7 conversation.

8 Q. But the claims, whatever the claims
9 are, whether you believe what Judge Gonzales
10 said or whatever ResCap has looked at
11 internally, the claims would still be there?

12 A. Which claims are these?

13 Q. The claims against Ally --

14 A. Sure.

15 Q. -- that you're trying to preserve
16 again.

17 Why does the -- what I don't
18 understand is, why does the amount of the claim
19 at ResCap, LLC go up or down depending upon the
20 global settlement? I could understand that the
21 recovery would go up. You're right. They will
22 recover a lot more on their \$337 million claim
23 in the event of a global settlement than they
24 will in the event that these cases get
25 converted. I get that.

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2 Why does the claim amount differ?

3 MR. KERR: And, again, if you can

4 answer that question without revealing what

5 was discussed and agreed to in the

6 confidential mediation.

7 A. All I can say is that that claim

8 amount results from the global settlement

9 agreement.

10 Q. And that's it?

11 A. That's it.

12 MR. SHORE: Okay.

13 I have no further questions.

14 Anybody else?

15 MR. CARNEY: Mike Carney. I have

16 about 10 minutes.

17
18 EXAMINATION BY MR. CARNEY:

19 Q. Sir, I'm Michael Carney again from
20 McKool Smith for Freddie Mac.

21 The ResCap trust holding FGIC wrapped
22 securities claims have claims against the
23 debtors; is that correct?

24 A. Sorry? Say that again.

25 Q. The ResCap trust holding FGIC wrapped

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2 Did you personally have an opinion
3 about it when you became aware of it?

4 MR. KERR: Objection.

5 A. Yes.

6 Q. And what was that opinion?

7 A. That if it could be accomplished in
8 the context of a global settlement agreement,
9 it would be helpful.

10 Q. Uh-huh.

11 But other than -- strike that.

12 Is it your understanding that the
13 FGIC computation was insisted upon as part of
14 that global settlement?

15 MR. KERR: Objection. On that, I
16 will direct -- I think that's covered by
17 the confidential mediation order, and I'll
18 direct the witness not to answer that.

19 BY MR. CARNEY:

20 Q. And I assume you're going to abide by
21 your counsel's direction?

22 A. Yes.

23 Q. Did you or did the debtors, rather --
24 first we'll start with the debtors -- did the
25 debtors do any substantive analysis of the FGIC